

Approved For Release 2002/08/06 : CIA-RDP78-04718A001500060007-4

Legal Services & Procedure

Executive Registry
6-9038

COMMISSION ON ORGANIZATION
OF THE
EXECUTIVE BRANCH OF THE GOVERNMENT

GENERAL ACCOUNTING
OFFICE BUILDING
WASHINGTON 25, D. C.

PRESS RELEASE

For release

Sterling 3-5200

April 11, 1955

Extension 5491

Washington, April 10—The Commission on Organization of the Executive Branch of the Government (the Hoover Commission) will tomorrow present a report to the Congress on Legal Services and Procedure in the United States Government. This report is divided into three chapters: I Legal Services, II Representation Before Agencies, and III Legal Procedure. It contains 52 specific recommendations.

One member of the Commission has filed a lengthy statement dissenting from a substantial number of the Commission's recommendations. All the other members of the Commission unite in the approval of the 28 recommendations appearing in Chapters I and II. With respect to Recommendations 49 to 52, inclusive, there is again the same unanimity except for the disagreement in part of one Commissioner with respect to a recommendation for a new administrative court.

The other 20 recommendations approved by the Commission (Numbers 29 to 48, inclusive) relate to highly technical modifications of the Administrative Procedure Act. However, there are differences in point of view with respect to these recommendations on the part of some members of the Commission.

The Commission's recommendations embrace a broad plan to separate administrative and judicial functions in Federal agencies and thus

give the public greater protection against abuses of power and arbitrary bureaucratic action.

The new Administrative Court of the United States, which the Commission proposes, would have three sections dealing with the adjudicative phases of tax, labor and trade regulation. As a further step toward taking from other administrative and regulatory agencies the power to be arbiters of their own decisions, it suggests that the Congress study the feasibility of transferring to existing courts of general jurisdiction certain judicial functions of these agencies such as the imposition, remission or compromise of money penalties, awarding of reparations or damages, and issuance of injunctive orders, wherever this can be accomplished "without harm to the regulatory process."

The Commission's proposals also are designed to clarify and define authority, resolve existing jurisdictional conflicts, eliminate unnecessary delays in procedures and decisions, and in general to develop a more orderly system of handling legal matters in Government.

The Commission calls for a reorganization of the work of the Department of Justice to separate its legal administrative duties from its litigation functions, with an Assistant Deputy Attorney General in charge of each division.

The recommendations also provide for clear recognition of the Department of Justice as the chief law office of the Government, empowered to conduct all litigation before the courts for the Government and its executive branches, except where Congress deems it essential to authorize other procedure. The Commission expresses the hope that departures from the suggested routine will be held to a minimum.

Other major recommendations of the Hoover Commission affecting the work of more than 50 agencies employing legal help include:

Development of a separate legal career service for civilian attorneys in Government, with a wage classification system designed to help recruit and hold outstanding talent in this profession.

Establishment of an Office of Legal Services and Procedure in the Department of Justice to administer the legal career service and to improve administrative practices.

Vesting of professional authority over the entire legal force and all legal services within the Department of Defense and its constituent military establishments in a General Counsel who would retain the present rank of Assistant Secretary of Defense.

Integration in most instances of the legal staff of each department, agency or regulatory body under an Assistant Secretary for Legal Affairs or a General Counsel.

Establishment of a Judge Advocate's General Corps or Department under the direction of Judge Advocates General of the Army, Navy and Air Force, to develop a program within the Armed Services to recruit promising young lawyers for military legal service careers; and establishment of a joint school of military justice for the four military services.

Sharp reduction in the legal personnel of the Veterans Administration by confining its Guardianship Service to those few States which have not yet substantially adopted the Uniform Veterans Guardianship Act, and limiting this service there largely to a follow-up procedure.

Improvement and clarification of standards of qualification and conduct in representation of the Government and its agencies and private individuals or parties before courts and administrative bodies, and clear distinction between lawyer and non-lawyer representation.

In regulatory matters, elimination or reduction in duplicating or overlapping jurisdiction by restricting the authority of Federal agencies over the same subject to a single agency or a combination of agencies, or by relinquishment of jurisdiction to State agencies which meet reasonable standards of regulation.

Precise and complete definition in enabling legislation of authority delegated by Congress to Federal administrative agencies.

Review by the Congress of the justification for any existing legal staff created without express statutory authority, and of such authority granted to agencies having small legal staffs.

Settlement by the Attorney General, with the assistance of the Office of Legal Counsel, of differences of interpretation of applicable law between agencies, where the agencies concerned agree to this procedure.

Some of the Commission's recommendations are aimed at checking the practice followed by some lawyers within agencies of interpreting the law in accordance with the decisions reached by the agency heads instead of acting in an advisory capacity in spelling out the law for the agency heads in advance to guide these decisions.

The Commission's proposals would affect about 5,300 attorney positions in Executive departments and agencies exclusive of those in the Department of Defense. Within that Department are about 1,300 civil attorneys and 3,100 military personnel performing exclusive legal duties. The legal staff of the Department of Justice, as of Jan. 1, 1954, consisted of 1,773 lawyers. The Department of Defense thus utilizes a legal staff two and one-half times the size of that required by the Department of Justice.

The section of the report which raised most questions in the minds of some members of the Commission deals with wider statutory controls over the actions of administrative agencies, including proposed advance hearings for parties affected or to be affected by changes in rules, in licenses or revocation of licenses, injunctive and regulatory orders and review of decisions on tests, examinations and inspections.

The section also would involve clarification of agency orders as published in the Federal Register; simple and prompt judicial remedies for all legal wrongs resulting from actions or inaction of an agency, and prompt disposition of all scheduled actions and investigations. Among other provisions would be restriction of agency publicity at the inception of a court action or investigation. Such publicity found by a reviewing court to have been released in advance of hearings or trials for the purpose of discrediting any persons under investigation or any party to a proceeding would be considered by the court as prejudicial pre-judgment and grounds for setting aside the action.

The proposed Administrative Court would assume judicial functions which might not readily be imposed on courts of general jurisdiction. The section handling tax matters would take over the limited jurisdiction in that field now vested in the Tax Court of the United States, which the Commission characterized as "the only strictly executive tribunal" in the country. The recommendation would remove it from the executive branch and make it into a form of legislative court comparable in form to that of the U. S. Court of Claims.

The second area to be embraced in the new court would be that of trade regulation. This would cover the injunctive and adjudicative phases of trade regulation now vested in such agencies as the Federal Trade Commission, the Interstate Commerce Commission, the Federal Communications Commission, the Civil Aeronautics Board, the Federal Reserve Board, the United States Tariff Commission, the Federal Power Commission, the Department of the Interior, and the Department of Agriculture.

The labor section of the court would have the adjudicative powers now vested in the National Labor Relations Board under the National Labor Relations Act over cases involving unfair labor practices.

Another field of authority suggested for the court would be that now handled within many agencies by hearing examiners. The Commission finds the existing system "wholly unsatisfactory." It would change the present hearing examiners into hearing commissioners and senior hearing commissioners and place them under a Chief Hearing Commissioner who would be appointed by the President with the consent of the Senate for a twelve-year term. The Chief Hearing Commissioner would be attached to the Administrative Court. His primary responsibility would be the

recruitment and nomination of "outstanding men" for hearing commissioner positions. In this work he would be guided by a Presidentially-appointed advisory committee of five members representing the judiciary, the interested agencies and attorneys in the active practice of administrative law.

In recommending elimination of most of the Veterans Administration Guardianship Service, the Commission cites the studies of Legal Services Task Force showing that the Veterans Administration's legal staff numbered more than 800, topped only by the Departments of Justice and Defense; and that the primary purpose of this legal staff was the handling of the Guardianship Service. The administrative cost of the service is about \$7 million a year.

The Hoover Commission points out that the Guardianship Service was created at a time when the standards of probate proceedings in large areas of the country were inadequate. The Uniform Veterans Guardianship Act has since been substantially adopted in about forty-five States, and so the need for the Guardianship Service is now largely obviated, the Commission adds. A substantial reduction in the legal staff handling this service could be made, the Commission concludes, at an estimated annual saving of about \$5 million "without endangering rights of the beneficiaries."

In connection with the creation of a joint school of military justice, the Commission proposes that the curriculum be confined strictly to military justice and military affairs. It opposes the proposals of military departments to permit officers to take undergraduate training for a law degree at Government expense. Such training might, if necessary,

be permitted for Marine Corps officers not above the rank of first lieutenant where the officer would agree to seek admission to the bar and to remain on active duty with the Marine Corps as officer-attorney for at least five years after completing the studies. The Commission explains that it makes the exception because it does not include the Marine Corps in the recommendation for a Judge Advocate General's Corps. The Marine Corps, it is pointed out, has a comparatively small legal staff and often calls on the Navy for legal help.

The proposed legal career service would embrace all civilian attorney positions in Government except those in appointive categories, and those in the Department of Defense. The Department of Defense would have a legal career service, to be developed and supervised by a proposed Civilian Legal Personnel Committee of that department, under the guidance of the Office of Legal Services and Procedure to be set up in the Department of Justice.

Development of a simplified classification system for lawyers would be in line with the revamped Civil Service Commission classification plan previously suggested by the Hoover Commission, with lawyers' salaries ranging from \$4,205 to \$11,800, and with provision for a senior attorney category under which the maximum salary would be \$17,500.

The Commission's recommendations are based on the experience and judgment of members of the Hoover Commission and on studies by a Legal Services Task Force made up of distinguished men in the legal profession, judges and teachers of law. The Task Force chairman was James Marsh Douglas, of St. Louis, Mo., formerly Chief Justice of the Supreme Court

of Missouri. The staff director was Whitney R. Harris, of Chicago, who is executive director of the American Bar Association.

The Task Force members assisting in the studies were Herbert W. Clark, of San Francisco, member of the council of the American Law Institute; Cody Fowler, of Tampa, Fla., former president of the American Bar Association; Albert J. Harno, of Urbana, Ill., former president of the Association of American Law Schools and now chairman of the board of the American Judicature Society; James M. Landis, of New York, formerly Dean of Harvard Law School; Carl McFarland, of Missoula, Montana, now president of Montana State University; Ross L. Malone, Jr., of Roswell, N.M., former Deputy Attorney General of the United States.

Also David F. Maxwell, of Philadelphia, former Chairman, House of Delegates, American Bar Association; Harold R. Medina, of New York, Judge of the U. S. Court of Appeals, Second Circuit; David W. Peck, of New York, Presiding Justice of the Appellate Division of the First Department, New York Supreme Court; Reginald Heber Smith, of Boston, Director of the Survey of the Legal Profession; E. Blythe Stason, of Ann Arbor, Mich., Dean of the University of Michigan Law School; Elbert Parr Tuttle, of Atlanta, Judge of the U. S. Court of Appeals, Fifth Circuit; and Edward L. Wright, of Little Rock, Ark., trustee of Southwestern Legal Foundation and of the International Association of Insurance Counsel.

Consultants included the late Robert H. Jackson, who was Associate Justice of the United States Supreme Court; George Roberts, of New York, formerly special counsel to the Reconstruction Finance Corporation; and Arthur T. Vanderbilt, of Newark, N.J., Chief Justice of the New Jersey Supreme Court.